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Message Text

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ORIGIN L-03

INFO OCT-01 ARA-16 ISO-00 COA-02 DODE-00 COME-00 NSF-04

PM-07 SCI-06 CIAE-00 INR-10 NSAE-00 RSC-01 INT-08

IO-15 /073 R

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S/FW-COA - MR. LEROY
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---------- 016290
R 041856Z OCT 73
FM SECSTATE WASHDC
TO AMEMBASSY QUITO
INFO AMEMBASSY LIMA
AMCONSUL GUAYAQUIL

C O N F I D E N T I A L STATE 197620

E.0. 11652: GDS
TAGS: PBOR, OCLR, EC

SUBJECT: VOYAGE OF RESEARCH VESSEL R/V YAQUINA AND
ECUADORIAN REGULATIONS GOVERNING VISITS BY
TOURIST AND RESEARCH VESSELS

REFS: (A) QUITO A-107, (B) QUITO 4738, (C) QUITO
4886, (D) NAVY - OFFICE OF OCEANOGRAPHER
LETTER OCEANAU: LAS SE 962/N3C

1. PER REF (C) DEPT. HAS CONTACTED OREGON STATE
UNIVERSITY ABOUT THEIR PLANS FOR OPERATION OF LEGS 3 AND
8 OF RESEARCH PROGRAM SET FORTH IN REF D. OREGON STATE
OFFICIALS INDICATE THEY ARE AWARE OF ECUADORIAN 200-MILE
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CLAIM AND PLAN TO STAY OUTSIDE ECUADORIAN CLAIMED WATERS

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ON LEG 3. WITH RESPECT TO LEG 8, RESEARCH OFFICIALS
ARE CONSIDERING WHETHER PARTICULAR ROUTE IS NECESSARY
FOR RESEARCH PURPOSES OR WHETHER R/V YAQUINA CAN PASS
THROUGH CORRIDOR OF UNCLAIMED WATERS WHICH RUNS
BETWEEN GALAPAGOS AND ECUADORIAN COAST. WHATEVER COURSE
IS CHOSEN, DEPT. WILL INFORM OREGON STATE OFFICIALS
OF GOE REGULATIONS AND SUGGEST THAT VESSEL TAKE APPRO-
PRIATE PRECAUTIONS TO AVOID GOE INTERFERENCE BY, FOR
EXAMPLE, UNDERTAKING AN ACTIVITY FOR WHICH GOE REQUIRES

CONSENT BUT WHICH AVOIDS RECOGNITION OF GOE MARITIME
CLAIMS NOT RECOGNIZED BY U.S. (SEE PARA 3 BELOW). DEPT.
WILL KEEP EMBASSY INFORMED AS TO OREGON STATE'S PLANS
FOR LEG. 8.

2. PER REF B, GENERAL GUIDANCE FOLLOWS. USG WILL NOT
RPT NOT MAKE A REQUEST FOR ANY PURPOSE TO THE GOE FOR
EITHER PUBLIC OR PRIVATE VESSELS WHERE TO DO SO WOULD
IMPLY RECOGNITION OF THE ECUADORIAN 200-MILE CLAIM OR
OTHER MARITIME CLAIMS WHICH WE BELIEVE ARE CONTRARY
TO INTERNATIONAL LAW. A PRIVATE VESSEL, OF COURSE,
CAN CHOOSE TO COMPLY WITH REGULATIONS ON ITS OWN
BY MAKING ITS OWN REQUEST. HOWEVER, IF IT SEEKS USG
ASSISTANCE IN MAKING ARRANGEMENTS WE WILL NOT TAKE
ACTION WHICH WOULD COMPROMISE OUR JURIDICAL POSITION
AND PREJUDICE OUR RIGHTS. NEVERTHELESS, DEPT. IS TAKING
ACTION TO ENSURE THAT U.S. PLEASURE AND RESEARCH VESSELS
ARE AWARE OF THE ECUADORIAN REGULATIONS.

3. GOE REGULATIONS REQUIRE CONSENT IN TWO INSTANCES
IN WHICH THE U.S. BELIEVES CONSENT CANNOT BE SOUGHT
UNDER INTERNATIONAL LAW. FIRST, A LITERAL READING OF
THE REGULATIONS RENDERS THEM APPLICABLE TO NAVIGATION
ANYWHERE WITHIN THE GOE CLAIMED 200-MILE TERRITORIAL
SEA. BECAUSE IN USG VIEW STATES CANNOT CLAIM
TERRITORIAL SEAS BROADER THAN 3 MILES UNDER INTERNATIONAL
LAW, WE WILL NOT REQUEST COASTAL STATE CONSENT FOR
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NAVIGATION IN AREAS WE REGARD AS HIGH SEAS. SECOND,
UNDER INTERNATIONAL LAW, AS CODIFIED IN 1958 CONVENTION
ON THE TERRITORIAL SEA AND CONTIGUOUS ZONE, FOREIGN
VESSELS HAVE RIGHT OF INNOCENT PASSAGE THROUGH HE
TERRITORIAL SEA. COASTAL STATES CANNOT REQUIRE CON-
SENT FOR VESSELS TRAVERSING TERRITORIAL WATERS IN
INNOCENT PASSAGE. THUS, IN ADDITION TO USG REFUSAL
TO MAKE REQUEST WHERE IT WOULD IMPLY RECONGITION OF

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GOE 200-MILE CLAIM, WE WILL NOT SEEK CLEARANCE FOR VESSELS NAVIGATING IN INNOCENT PASSAGE EVEN WITHIN 3 MILES OF THE GOE COAST. THERE ARE, HOWEVER, CERTAIN SITUATIONS IN WHICH USG RECOGNIZES COASTAL STATE RIGHT TO DEMAND CONSENT. THESE ARE ENUMERATED BELOW.

4. FOR RESEARCH VESSELS, THERE ARE IN GENERAL THREE SITUATIONS IN WHICH USG RECOGNIZES COASTAL STATE JURISDICTION AND RIGHT TO DEMAND CONSENT FOR RESERACH ACTIVITIES. FIRST, WITHIN A THREE MILE TERRITORIAL SEA, THE COASTAL STATE HAS SOVEREIGNTY, EXCEPT FOR THE

RIGHT OF INNOCENT PASSAGE ACCORDED TO FOREIGN VESSELS, AND ACCORDINGLY CAN REQUIRE CONSENT FOR RESEARCH OF ANY SORT UNDERTAKEN WITHIN THE THREE MILE LIMIT. SECOND, BECAUSE THE U.S. BELIEVES THAT UNDER INTERNATIONAL LAW A COASTAL STATE CAN CLAIM AN EXCLUSIVE FISHERIES ZONE OUT TO 12 MILES A COASTAL STATE CAN IMPOSE A CONSENT REQUIREMENT ON VESSELS DOING FISHERIES RELATED RESEARCH WITHIN 12 MILES. THIRD, PURSUANT TO ART. 5, PARA 8 OF THE CONTINENTAL SHELF CONVENTION, CONSENT MUST BE OBTAINED FROM THE COASTAL STATE TO DO RESEARCH QUOTE CONCERNING THE CONTINENTAL SHELF AND UNDERTAKEN THERE END QUOTE. USG INTERPRETS THE TERM QUOTE UNDERTAKEN THERE END QUOTE TO MEAN RESEARCH WHICH ACTUALLY PHYSICALLY TOUCHES THE CONTINENTAL SHELF. ACCORDINGLY, IN U.S. VIEW, UNDERWAY REMOTE SENSING, SUCH AS THAT UNDERTAKEN BY R/V YAQUINA ON LEGS 3 AND 8, WOULD NOT REQUIRE CONSENT. WHERE AN ACTIVITY MEETS THE DEFINITION OF CONTINENTAL SHELF RESEARCH UNDER THE CONVENTION, CONFIDENTIAL

THE CONVENTION FURTHER PROVIDES THAT THE COASTAL STATE SHALL NOT NORMALLY WITHHOLD ITS CONSENT IF THE REQUEST IS SUBMITTED BY A QUALIFIED INSTITUTION WITH A VIEW TO PURELY SCIENTIFIC RESEARCH INTO THE PHYSICAL AND BIOLOGICAL CHARACTERISTICS OF THE SHELF, PROVIDED THAT THE COASTAL STATE HAS THE RIGHT, IF IT SO DESIRES, TO PARTICIPATE OR BE REPRESENTED IN THE RESEARCH AND THAT THE RESULTS ARE PUBLISHED. IN ANY OF THESE THRE
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TERRITORIAL SEA LIMIT, OCEANOGRAPHIC RESEARCH, TWO HUNDRED MILE LIMIT
Control Number: n/a
Copy: SINGLE
Draft Date: 04 OCT 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: collinp0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973STATE197620
Document Source: CORE
Document Unique ID: 00
Drafter: MBWEST:JV
Enclosure: n/a
Executive Order: GS VAN CAMPEN
Errors: N/A
Film Number: n/a
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19731050/aaaabkqn.tel
Line Count: 157
Locator: TEXT ON-LINE
Office: ORIGIN L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: (A) QUITO A-107, (B) QUITO 4738, (C)
Review Action: RELEASED, APPROVED
Review Authority: collinp0
Review Comment: n/a
Review Content Flags: ANOMALY
Review Date: 18 JAN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <18-Jan-2002 by martinjw>; APPROVED <20 FEB 2002 by collinp0>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: VOYAGE OF RESEARCH VESSEL R/V YAQUINA AND ECUADORIAN REGULATIONS GOVERNING VISITS BY
TAGS: PBOR, OCLR, EC
To: QUITO
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

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